

REMARKS

With entry of this amendment, claims 1-57 are pending in the application. By this amendment, claims 1-7, 9-13, 15-18, 28, 34 and 36 have been amended in accordance with the Examiner's suggestions, for clarity and without intent nor effect to limit the claims. Primary claims 1 and 28 have been specifically amended to overcome the Examiner's arguments that formed the basis for the Final Office Action of January 10, 2006. Supporting arguments for these amendments are made subsequent remarks. All the amendments presented herein are fully supported by the disclosure, and no new matter has been added to the application. Entry of these amendments and reconsideration of the application in view of the accompanying remarks is earnestly solicited.

Claims Rejected Under 35 USC § 112

Claims 2-7, 9-13 and 15-18 contained hyphenated typographical errors noted in the Examiner's current Office Action; these have been corrected by amendments as indicated. The Applicant found two additional typos of the same nature in claims 34 and 36, and these too were corrected with appropriate amendments. In claim 5, the term "product" was inadvertently left off the end of the line and has been returned as amended. All these claims have been amended herein for clarity, without prejudice nor intent nor effect to limit the scope of the claims, in accordance with the Examiner's suggestions, thereby obviating the asserted grounds for rejection.

Claims Rejected Under 35 USC § 103(a)

Claims 1, 4-6, 10, 13, 15, 17-21, 27-28, 31-33, 36, 39, 41, 43-47 and 53-54 were rejected under 35 USC § 103(a) as being unpatentable over Cole (713,606) in view of Salfisberg (2,298,421 and Paley et al. (5,814,959). Simply employing an alternative container would have been obvious to one of ordinary skill, a mere substitution of analogous container means.

The Examiner found the Applicant's responses and arguments filed "September 6, 2006" not persuasive (*this date is in error, the Response was November 25, 2005*), judging the combination of references established a level of "knowledge generally available to one of ordinary skill in the art." Without restating earlier arguments on this matter, the Applicant still finds no teaching, suggestion, or motivation to combine the references pursuant to a specific principle that suggests the combination of prior art as done by the Examiner. However, while continuing to traverse the current and Final rejection, to advance the Application to successful allowance the Applicant has amended independent claims 1 and 28 to include a new and limiting defining aspect of the invention. Previously, claims 1 and 28 defined the invention in three parts or aspects:

- Polymeric packet with transparent sidewalls
- Fluid sealed within packet
- Insert in contact with fluid

To these three aspects the Applicant has amended claims 1 and 28 with a fourth defining aspect:

- Packet structure provided by insert stiffness

The stiffness aspect of the insert is described in the specification (page 13, lines 3-6) and forms the bases of claims 16 and 42. The Examiner's arguments to date have not specifically addressed either claim 16 or 42, nor have any of the references so far cited by the Examiner described or discussed this aspect of the invention. The Applicant believes this limiting aspect of the invention, introduced into both independent claims 1 and 28 by the current amendments, redefines the invention in a manner neither obvious nor knowable to one of ordinary skill in the art as can be demonstrated by the record. Specifically, that only by using this application as a guide would references be combined to demonstrate a prior level of knowledge or skill.


Recognizing that the Examiner's other references and their associated arguments in the current Action are reassertions of matters already discussed in earlier Responses, the Applicant reserves further comment for the Appeal Brief and/or future Request for Continued Examination prosecutions. Failing any progress on allowance these actions will be taken because the Applicant respectfully believes the Examiner has simply



misconstructed several cited references and their combinations. For example, the Examiner continues in the current Action to claim Cadwell (956,937) teaches an "insert in contact with the liquid product". In the Response of 25 November 2005 it is clearly shown this is not the case at all, that Cadwell expressly discloses that the insert is protected from contacting the liquid product by placing it in a separate capsule, this is the essential novelty of the Cadwell patent and separates it from Cole. Consequently, the combination of Cadwell with Salfisberg and Paley is flawed and factually deficient as a basis for rejecting the subject claims.

In view of the foregoing, Applicant believes that all claims now pending in this application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested. If the Examiner believes that a telephone conference would expedite prosecution of this application, please telephone the undersigned at 425.898.0800.

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